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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 01-20086-JF
)	
Plaintiff,)	
)	
v.)	
)	
VICTOR MARTINEZ,)	
)	
Defendant.)	

UNITED STATES OF AMERICA,)	No. CR 07-00550-RMW
)	
Plaintiff,)	
)	
v.)	
)	
VICTOR MARTINEZ,)	
)	
Defendant.)	

NOTICE OF RELATED CASES IN A CRIMINAL ACTION

The Government hereby gives notice pursuant to Criminal Local Rule 8-1 that the two above-captioned criminal cases are believed to be “related” within the meaning of said rule.

Criminal Local Rule 8-1(b)(1) provides that criminal cases are related to each other if

1 “(b)oth actions concern one or more of the same defendants and the same alleged events,
2 occurrences, transactions or property.” Criminal Local Rule 8-1(b)(2) also provides that
3 criminal cases are related to each other if “(b)oth actions appear likely to entail substantial
4 duplication of labor if heard by different judges or might create conflicts and unnecessary
5 expenses if conducted before different judges.”

6 In United States v. Victor Martinez, Case No. CR 01-20086-JF, the defendant is charged for
7 the third time with violating his supervised release conditions in a Form 12 filed by the United
8 States Probation Office. The current allegations include that the defendant 1) illegally used
9 marijuana and methamphetamine and 2) failed to report to the United States Probation Officer
10 within 72 hours of release from the Bureau of Prisons. In order to avoid possible improper
11 double punishment, however, the current Form 12 does not allege that the defendant failed to
12 surrender on April 21, 2006 to serve the three-month sentence at the Bureau of Prisons that
13 Judge Fogel personally ordered the defendant to serve in that case while the defendant was in
14 court on March 1, 2006.

15 In United States v. Victor Martinez, Case No. CR 07-00550-RMW, the defendant is charged
16 with the separate offenses of failing to surrender to serve the above-mentioned three-month
17 sentence and with contempt of court by failing to so surrender.

18 In order to prove the two offenses alleged in Case No. CR 07-00550-RMW, the government
19 must present evidence that the defendant was on supervised release in Case No. CR 01-20086-JF
20 and that he was ordered by Judge Fogel to surrender to serve a three-month sentence in that case
21 that he later failed to surrender to serve. The government must also present evidence that the
22 defendant knowingly disobeyed a lawful order issued by Judge Fogel. The wording of the
23 contempt statute itself makes it clear that Judge Fogel has the power to personally sentence the
24 defendant in this newer case for violating his own order; recusal of a judge in a contempt case is
25 only required where the judge was so “personally embroiled” with the defendant as to require
26 disqualification. United States v. Galin, 222 F.3d 1123, 1128 (9th Cir. 2000).

27 As a result, the government maintains that these two cases are related within the meaning of
28 Criminal Local Rule 8-1(b)(1) because they involve the same defendant; proof of the charges in

1 the newer case requires the introduction of evidence related to the earlier case; both cases appear
2 to entail substantial duplications of labor if heard by different judges; and the defendant's
3 contumacious conduct in the newer case should be sentenced by the same judge whose order was
4 disobeyed in that case - which judge is the same judge who was assigned to the earlier case.

5 Pursuant to Criminal Local Rule 8-1(c)(4), the government further maintains that assignment
6 to a single judge "is likely to conserve judicial resources and promote an efficient determination
7 of the action." Accordingly, pursuant to Criminal Local Rule 8-1(e), the Government requests
8 that both cases be assigned to the judge assigned to the earliest-filed case, to wit, Judge Jeremy
9 Fogel.

10
11 DATED: 09/14/07

12 Respectfully submitted,

13 SCOTT N. SCHOOLS
14 United States Attorney

15 /S/

16 JOHN N. GLANG
17 Assistant United States Attorney
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